

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2011-051310

01/18/2012

HONORABLE MICHAEL R. MCVEY

CLERK OF THE COURT  
R. Tomlinson  
Deputy

MARK W HAILE

GREGORY P GILLIS

v.

TODAYS HEALTH CARE I I

MAURICE DANIEL EVANS

MINUTE ENTRY

The Court has considered Plaintiffs' Motion for Summary Judgment, Defendant's Response and Cross Motion for Summary Judgment, Plaintiffs' Reply in Support of their Motion for Summary Judgment and Response to Defendant's Cross Motion for Summary Judgment, and Defendant's Reply in Support of its Motion for Summary Judgment. The Court has further considered the Statements of Facts submitted by each party in support of their respective Motions for Summary Judgment, and oral argument of counsel for the parties.

On or about August 12, 2010, each of the Plaintiffs entered into separate loan agreements with the Defendant. Each Plaintiff loaned Defendant \$250,000.00 for the stated purpose of financing a "retail medical marijuana sales and grow center." Each loan was memorialized by a loan agreement and a promissory note. (The loan documents). These loan documents required Defendant to pay Plaintiffs interest at the rate of 12% per annum on the 12<sup>th</sup> day of each month. The agreement provided that in the event of a default, Defendant had five (5) days within which to cure its default. If Defendant failed to cure its default within five (5) days, Plaintiffs were entitled to repayment of the principal loan amount at a default interest rate of 21%, plus any costs and attorneys' fees associated with enforcement and collection.

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Defendant failed to timely pay interest on the loans by March 12, 2011. As of March 17, 2011, Defendant defaulted on its obligations under the loan obligation. These facts are not disputed.

The sole legal issue presented by both the Motion for Summary Judgment, as well as the Cross Motion for Summary Judgment is whether the loan documents are enforceable, or whether they are void and unenforceable due to illegality. As mentioned, both loan agreements specifically provide as follows:

“Borrower shall use the loan proceeds for a retail medical marijuana sales and grow center.”

The retail medical marijuana sales and grow center was located in Colorado. Colorado, like Arizona, has adopted a scheme by which patients may obtain amounts of marijuana for medicinal purposes with a prescription from a physician. However, the United States’ Controlled Substances Act (“CSA”) makes it illegal to manufacture, distribute, or dispense or possess with intent to manufacture, distribute, or dispense a controlled substance. 21 U.S.C.A. § 841. The United States still categorizes marijuana as a Schedule I, controlled substance pursuant to the CSA and Federal Criminal Statutes. 21 U.S.C.A. § 812. It is unlawful to knowingly open, lease, rent, use or maintain property for the manufacturing, storing, or distribution of controlled substances. 21 U.S.C.A. § 856. Finally, under Federal Law, it is unlawful to aid and abet the commission of a Federal crime. 18 U.S.C.A. § 2.

In *Gonzales v. Raisch*, 545 U.S. 1, 125 S.Ct. 2195, 162 L.Ed. 2d. 1, (2005), the U.S. Supreme Court addressed the conflict between Federal Law, which continues to outlaw the possession and distribution of marijuana, and state medical marijuana laws. In that case, the Supreme Court held that prohibition of such sales of marijuana is properly within Congress’ authority under Art. I, Sec. 8 of the United States Constitution (The Commerce Clause). Thus, dispensation of marijuana, even for medicinal purposes, remains illegal – state law not withstanding.

An agreement is unenforceable if the acts to be performed would be illegal or would violate public policy. *White v. Maddox*, 127 Ariz. 181, 619 P.2d 9 (1980); *Mountain States Bolt, Nut & Screw v. Best-Way Transp.*, 116 Ariz. 123, 568 P.2d 430 (App 1977).

Plaintiffs argue the promissory notes are still enforceable despite the recitation of an illegal purpose in the Loan Agreement, because the promissory notes can be enforced without any proof of an illegal purpose. However, a contract which in itself is not unlawful either in what it promises or in the consideration for the promise may nevertheless be rendered void as

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against public policy as part of a general scheme to bring about an unlawful result. 8 Williston on Contracts section 19:11 (4<sup>th</sup> Ed.).

The explicitly stated purpose of these loan agreements was to finance the sale and distribution of marijuana. This was in clear violation of the laws of the United States. As such, this contract is void and unenforceable. This Court recognizes the harsh result of this ruling. Although Plaintiffs did not plead any equitable right to recovery such as unjust enrichment, or restitution, this Court considered whether such relief may be available to these Plaintiffs. Equitable relief is not available when recovery at law is forbidden because the contract is void as against public policy. *Landi v. Arkules*, 172 Ariz. 126, 136, 835 P.2d 458, 468; DOBBS ON REMEDIES § 13.5, at 994-47. The rule is that a contract whose formation or performance is illegal is, subject to several exceptions, void and unenforceable. But this is not all, for one who enters into such a contract is not only denied enforcement of his bargain, he is also denied restitution for any benefits he has conferred under the contract. *Id.*

This Court finds that there are no genuine issues of material fact and that Defendant is entitled to judgment as a matter of law. Therefore,

**IT IS ORDERED** granting summary judgment on Defendant's Cross Motion for Summary Judgment and dismissing Plaintiffs' Complaint with prejudice.

**IT IS FURTHER ORDERED** denying Plaintiffs' Motion for Summary Judgment.

As the contracts are void as against public policy, no attorneys' fees are awarded to Defendant. However,

**IT IS ORDERED** awarding Defendant its taxable costs.

ALERT: The Arizona Supreme Court Administrative Order 2011-140 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.